

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT WITH FARMER'S SERVICE COMPANY Permit No. VPA01024**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Farmer's Service Company, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "FSC" means Farmer's Service Company, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Regulation" means 9 VAC 25-32-10 *et seq.* - Virginia Pollution Abatement (VPA) Permit Regulation.
9. "Permit," means VPA Permit No. VPA01024.

## **SECTION C: Findings of Fact and Conclusions of Law**

1. FSC owns and operates two ready-mixed concrete facilities located at 865 Main St., Smithfield, Virginia. The older plant is inoperative, but the washout area and sedimentation pits are still used on a weekly basis. The new plant is the only plant producing concrete. FSC is subject to the Permit, which became effective on December 11, 2000, and expires on December 11, 2010. The Permit does not allow a discharge of pollutants to surface waters except in the case of a 25-year, 24-hour or greater storm event.
2. Section 62.1-44.5.A of the Code and Section 9 VAC 25-32-30.B.1 of the Regulation state: "Except in compliance with a permit...issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
3. Section 9 VAC 25-32-30.A of the Regulation states: "All pollutant management activities covered under a VPA permit shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm."
4. Part I.B.4 of the Permit, Operations and Maintenance (O&M) Manual, states: "The owner shall maintain an O&M Manual for the treatment works/pollutant management system permitted herein. This manual shall reflect the practices and procedures...followed by the permittee to insure compliance with the requirements of this Permit." FSC's O&M Manual states that water flows into basin #3 of the new plant where it evaporates or will be pumped back to the wash out area for washing out trucks. It also states the wash out area and sedimentation pits of the old plant will be used as a "backup" facility if a catastrophic event disables the new plant. The O&M Manual is an enforceable part of the Permit.
5. Part II.R of the Permit, Disposal of Solids and Sludges, states: "Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutants from such material from entering state waters."
6. On November 6, 2002, DEQ Compliance staff (Staff) inspected FSC and observed the following:
  - a. Drainage from concrete solids placed outside the drying pad area at the new plant was observed flowing into a drop inlet, which ultimately drains into a tributary of Little Creek (tributary).
  - b. At the new plant, wastewater flows, via gravity from basin #1 to basin #2 through a V-shaped trough. This trough was filled with debris preventing the wastewater from flowing into basin #2. The wastewater was overflowing the trough and observed flowing down the hill located on the West side of the property and into the tributary.
  - c. FSC was not recycling the wastewater at the new plant. In addition, FSC uses the wash out area and sedimentation pits of the old plant approximately three times a week.

- d. Waste concrete solids, stored behind basin #3 of the old plant and adjacent to basins #1 and #2 of the new plant, were uncovered and open to the elements.
7. On November 22, 2002, DEQ issued Notice of Violation No. W2002-11-T-0001 to FSC for the above violations.
8. On December 5, 2002, Staff inspected FSC and observed a pump discharging untreated wastewater from basin #3 of the new plant onto the ground. The wastewater was observed flowing offsite towards the tributary. It was not observed entering the tributary.
9. On February 3, 2003, DEQ issued Notice of Violation No. W2003-01-T-0002 to FSC for this unpermitted discharge.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders FSC, and FSC agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders FSC, and FSC voluntarily agrees, to pay a civil charge of \$2,900 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include FSC's Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of FSC, for good cause shown by FSC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to FSC by DEQ on November 22, 2002 and February 3, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, FSC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. FSC consents to venue in the Circuit Court of Isle of Wight County for any civil action taken to enforce the terms of this Order.
5. FSC declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by FSC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. FSC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. FSC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FSC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which FSC intends to assert, will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto; their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FSC. Notwithstanding the foregoing, FSC agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until FSC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order.
12. By its signature below, FSC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Francis L. Daniel, Tidewater Regional Director for  
Robert G. Burnley, Director  
Department of Environmental Quality

FSC voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of Smithfield, VA

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of FSC, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## APPENDIX A

FSC shall:

1. By **June 27, 2003**, review and update the Operations and Maintenance Manual (O&M Manual) to reflect current operating and maintenance procedures at FSC.
2. By **July 1, 2003**, submit the revised O&M Manual to DEQ for review and approval.
3. By **July 1, 2003**, plant and maintain acceptable vegetative cover (i.e. grass, clover) on all berms surrounding the basins at the old and new plant.
4. By **July 25, 2003**, all concrete production materials and waste concrete solids shall be stored in a manner to prevent contaminated storm water from leaving the site.
5. All submittals and reports required by this Appendix A shall be mailed to:  
Francis L. Daniel  
Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462